***THE HON'BLE SRI JUSTICE BILAL NAZKI**

AND

THE HON'BLE SRI JUSTICE P.S.NARAYANA

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+WRIT PETITION NO. 2421 OF 2004

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% 13-07-2004

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Between:

M/s.Sri Venkatesh Paper Agencies (Hyd) Private Limited, rep. By its Managing Director Mr.Ramanuj Baldwa.

..... PETITIONER

AND

The Commissioner of Income Tax-III, Hyderabad & 3 others.

.....RESPONDENTS

For the Appellant : MR.S.Ravi, Advocate.

For the Respondents : Mr.S.R.Ashok, Advocate.

< Gist:

> Head Note:

? CITATIONS:

Nil

C/15

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE THIRTEENTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 2421 of 2004

Between:

M/s. Sri Venkatesh Paper Agencies [Hyd]Private Limited, A Private Limited Company, Having its Registered Office at 4 Raghava Ratna Towers, 1st Floor, Chirag Alilane, Hyderabad-500001, rep., by its Managing Director, Mr. Ramanuj Baldwa, S/o. Sri Bankatlal Baldwa.

..... PETITIONER

AND

1 The Commissioner of Income-Tax-III, Aayakar Bhavan, Hyderabad.
2 The Additional Commissioner of Income Tax, Range-3, Hyderabad.
3 The Assistant Commissioner of Income Tax, Circle 3[2] Hyderabad.
4 The Income Tax Officer, Ward 3[1], Hyderabad.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, direction or order especially in the nature of Writ of Mandamus by quashing the communication No. CTT -III/Retn[79]/2003-2004 dated 31.12.2003 issued by the Commissioner of Income Tax-III, Hyderabad authorizing the retention of books for a further period upto 31st December, 2004 and consequently direct the respondents to forthwith return all the books and documents impounded under order dated 11.12.2002 passed under Section 131[3] of the Income Tax Act, 191.

Counsel for the Petitioner:MR.S.RAVI, Advocate.

Counsel for the Respondents : MR.S.R.ASHOK

The Court made the following :

ORDER : (Per Sri Bilal Nazki, J)

Heard learned Counsel for the parties. With their agreement, the Writ Petition is being disposed of at this stage. Counter has been filed.

The controversy is in a short compass. Certain documents belonging to the petitioner, have been impounded by the respondents on 11.12.2002. The assessment has not been completed so far. The grievance of the petitioner is that inspite of his repeated requests, the documents are not being returned to him and as a result, it is creating difficulty for him to even run the business and to file the Income-tax returns. He has taken us to the list of the impounded documents, which show that even the Sales Register pertaining to the year 2002-2003 has been impounded. Most of the documents impounded, pertain to the years 2001-2002 and 2002-2003 and the documents are necessary for filing the tax returns. The learned Counsel for petitioner submits that even the returns for the year 2002-2003 could

not be filed because of non-availability of the documents. He relies on Sub-Section 3 of Section 133-A of the Income Tax Act (hereinafter referred to as 'the Act'), which lays down;

"An income-tax authority acting under this section may,---

i. *if he so deems necessary, place marks of identification on the books of account or other documents inspected by him and make or cause to be made extracts or copies therefrom,*

[(ia) impound and retain in his custody for such period as he thinks fit any books of account or other documents inspected by him:

***Provided** that such income-tax authority shall not---*

a. *impound any books of account or other documents except after recording his reasons for so doing; or*

[(b) retain in his custody any such books of account or other documents for a period exceeding ten days (exclusive of holidays) without obtaining the approval of the Chief Commissioner or Director General therefor, as the case may be,]

ii. *make an inventory of any cash, stock or other valuable article or thing checked or verified by him,*

iii. *record the statement of any person which may be useful for, or relevant to, any proceeding under this Act."*

Emphasis on this provision is laid to show that documents can't be retained indefinitely.

On the other hand, the learned Senior Counsel appearing for respondents submits that these documents are necessary for completing the assessment and notices were already issued to the petitioner and if he cooperates, the assessment will be finalized and the documents will be returned and in the meantime if the petitioner needs any of the documents, he can get the extracts from the Department.

In terms of the mandatory provision under Sub-Section (3) of Section 133-A of the Act, we are of the view that documents ordinarily can be retained only for ten days. Retention of documents beyond ten days

needs approval of Chief Commissioner or Director General. Section 133-A(1) clearly lays down that Income Tax authority can place marks of identification on documents. He can make extracts and copies. Making of copies and placing marks of identification on documents read with the mandate that documents can ordinarily be retained for ten days, leaves no room to any confusion and it becomes clear that if documents are retained for fairly long time then Department should retain copies and return the documents to assessee.

Accordingly we direct the documents mentioned in inventory at Serial Numbers 1, 2, 4, 6, 10, 11 and 12 shall be returned to the petitioner-assessee. The Department may retain photocopies of the whole of the documents or the extracts of the documents which they think proper, before originals are returned to the petitioner. Attestation of the petitioner on the photocopies of the documents may be obtained by the Department. In respect of other documents, the Department may provide extracts duly attested, if required by the petitioner.

Writ Petition is accordingly disposed of. No costs.

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(Bilal Nazki, J)

13th July, 2004.

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(P.S.Narayana, J)

ajr.

To

1 The Commissioner of Income-Tax-III, Aayakar Bhavan, Hyderabad.
2 The Additional Commissioner of Income Tax, Range-3, Hyderabad.
3 The Assistant Commissioner of Income Tax, Circle 3[2] Hyderabad.
4 The Income Tax Officer, Ward 3[1], Hyderabad.

5 Two C.D. Copies.